

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

ED L. HARVEY,

Petitioner,

v.

CIVIL ACTION NO. 3:09-1244

WEST VIRGINIA PAROLE BOARD, et al.,

Respondents.

ORDER

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact, and recommended that this Court dismiss the Petition and Amended Petition for a Writ of Habeas Corpus, and deny the petitioner's remaining motions. The petitioner has filed objections to the Magistrate Judge's Findings and Recommendations.

The Court, having reviewed, *de novo*, the pleadings and the petitioner's objections, **ADOPTS** and **INCORPORATES** the Magistrate Judge's Findings and Recommendations with modification, and **DISMISSES** the petition.

DISCUSSION

Petitioner Ed Harvey ("Petitioner") has timely objected under 28 U.S.C. § 636(b)(1)(C). The Magistrate Judge's findings are thus reviewed *de novo*. *See Wright v. Collins*, 766 F.2d 841, 845 (4th Cir. 1985). In her Findings and Recommendations, the Magistrate Judge recommends that the petition be dismissed pursuant to the screening provisions of 28 U.S.C. § 1915. She also recommends

that the Court deny Petitioner's application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915(e)(2)(B), and that the remaining motions on the docket be dismissed as moot.

The Magistrate Judge has adequately detailed the material facts in this case. The Court need not repeat them here. At the threshold, the Court notes that the requirements of the Prison Litigation Reform Act ("PLRA") are not applicable to habeas proceedings. *See Dellarciiprete v. Gutierrez*, No. 1:05-143, 2006 U.S. Dist. LEXIS 95948, at *14 (N.D. W. Va. Dec. 29, 2006). Accordingly, the Court declines to apply the PLRA to this case—to the extent that the Magistrate Judge's Proposed Findings and Recommendations rest upon that statute.

However, the Court agrees with the Magistrate Judge that the instant petition has been rendered moot by Petitioner's recent discharge from the Division of Corrections. *See Larue v. Adams*, No. 1:04-0396, 2006 U.S. Dist. LEXIS 38934, at *2 (S.D. W. Va. June 12, 2006) (finding moot plaintiff's request for placement in a halfway house for the last six months of her incarceration because she had already completed her term of imprisonment). Here, Petitioner asks the Court to credit 60 days "against [his] discharge date." As the Magistrate Judge aptly noted, Petitioner cannot be released early even if his allegations are true because he is no longer incarcerated.

Finally, while Petitioner's objections are generally difficult to decipher, they appear to request most of the same types of relief already specified in both the Petition and Amended Petition. One distinguishing basis is Petitioner's claim that "the law suit [sic] is seeking *damages* for the wrongs that took place concerning the issues stated." Pet.'s Obj. 8, No. 25 (emphasis added). The Court, however, does not examine the merits of a potential 42 U.S.C. § 1983 action in this Order, and Petitioner remains free to initiate such an action.

CONCLUSION

For the foregoing reasons, the Court, upon *de novo* review, concludes that the petition must

be dismissed. Accordingly, the Court **ADOPTS** the Proposed Findings and Recommendations of the Magistrate Judge with the noted modifications, **DENIES** Petitioner's objections, and **DISMISSES** the petition in accordance with the Magistrate Judge's Proposal.

The Court **DIRECTS** the Clerk to forward copies of this Order to all counsel of record, and any unrepresented parties.

ENTER: November 5, 2010



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE